

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

November 9, 2021 at 1:30 p.m.

1.	21-23002 -C-13	LAWRENCE FUNG	OBJECTION TO DEBTOR'S CLAIM OF
	RDG -2	Eric Schwab	EXEMPTIONS
			10-5-21 [12]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 15.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Objection to Claimed Exemptions is XXXXXX

The Trustee filed this Objection seeking an order disallowing the debtor's exemption claimed in his residence because Schedule C did not specifically state an exempt dollar amount.

Thereafter, the debtor filed Amended Schedule C which lists an exemption of \$371,900.00. Dkt. 22. However, on Amended Schedule C the box checked indicates the exemption is for "100% of fair market value," and not the stated exempt amount.

Because the specific dollar amount is not indicated as the amount claimed exempt, it is not clear if the Objection is moot. At the hearing, XXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by the Chapter 13 trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

November 9, 2021 at 1:30 p.m.

Page 1 of 17

IT IS ORDERED that Objection is **xxxxxxxxxx**

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 151.

The Motion to Incur Debt is granted.

The debtors filed this Motion seeking authority to incur debtor to refinance the debtors' residence located at 9531 Dominion Wood Lane, Elk Grove, California.

The proposed financing is in the principal amount of \$322,374.00, paid at 3 percent interest over a 30-year term. Monthly payments are proposed to be \$1,359.14.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Brett Wood Hutchens and Susan Evette Hutchens having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtors' counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

Final Ruling: No appearance at the November 9, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 31 days' notice was provided. Dkt. 13.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Value is granted.

The debtor filed this Motion seeking to value the portion of Regional Acceptance Corporation's ("Creditor") claim secured by the debtor's property commonly known as a 2019 Ford Fusion S (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$22,225.00. Declaration, Dkt. 12.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on March 26, 2019, which is more than 910 days prior to filing of the petition. 11 U.S.C. § 1325(a)(9) (hanging paragraph).

Upon review of the record, the court finds the value of the Property is \$22,225.00. Therefore, Creditor's secured claim is determined to be \$22,225.00. 11 U.S.C. § 506(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Regional Acceptance Corporation ("Creditor") secured by property commonly known as a 2019 Ford Fusion S (the "Property") is determined to be

a secured claim in the amount of \$22,225.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 23.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor did not attend the October 14, 2021, Meeting of Creditors.
2. The debtor's disposable income is enough to provide a 100% dividend to unsecured claims, but the plan proposes only a 15% dividend.
3. The debtor's Schedule J lists a 20-year-old daughter as a dependent and includes a monthly expense of \$1,323.00 for the daughter's school tuition and books. This expense is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor.
4. The debtor has included on her Schedule I a monthly deduction of \$946.83 for voluntary contributions for retirement plans.
5. The debtor also has included on her Schedule I a monthly deduction of \$528.67 for required repayments of retirement fund loans.

DISCUSSION

A review of the docket shows the debtor attend the continued 341 Meeting and it was concluded.

However, the rest of the trustee's grounds for opposition are well-taken. The debtor has not provided evidence to meet the debtor's burden of showing all of the debtor's projected disposable income is being committed to the plan because the debtor has unnecessary expenses, and because the plan does not include payment increases for when repayment of retirement loans finishes.

That is reason to deny confirmation. 11 U.S.C. § 1325(b)(1). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

5. [21-20838](#)-C-13 RON COLLA
Peter Macaluso

CONTINUED EVIDENTIARY HEARING
RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-26-21 [[72](#)]

ROCKY TOP RENTALS, LLC VS.

Thru #7

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 33 days' notice was provided. Dkt. 78.

The Motion for Relief from the Automatic Stay is ~~xxxxxx~~.

Creditor Rocky Top Rentals, LLC("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's rented portable storage building described as a Lofted Barn, Inventory No. WLB-D1074-1012-040518-T (the "Property").

Movant argues cause for relief from stay exists because the lease agreement expired on June 10, 2021; the debtor has retained the Property without making payments; the debtor does not have equity in the Property; and because the debtor does not intend to assume the lease.

The particular legal basis for relief from stay under 11 U.S.C. § 362 is not specified.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on September 13, 2021. Dkt. 81. The debtor argues that the contract between the debtor and the Movant is "lease-to-own" agreement that should be considered a purchase-money security interest, and not a lease agreement.

The debtor argues further that the Movant's secured claim is provided for in the plan.

MOVANT'S REPLY

Movant filed a Reply on September 21, 2021. Dkt. 89. Movant argues that (1) by the agreement's own terms, the agreement is a lease and not a security agreement; (2) that the agreement is a lease under the meaning of C.C.P. § 1812.622(d).

SUMMARY OF AGREEMENT

The Rental Purchase Agreement and Disclosure Statement executed by the debtor and Movant was filed as Exhibit 1. Dkt. 76.

The agreement provides that the debtor make 36 monthly payments of

\$172.45, totaling \$6,208.20. The agreement also offers options to buy the Property.

The first early purchase option is within 3 months of execution of the agreement. In that event the purchase price is \$3,725.00 for the Property plus past due fees, less all of the \$172.45 periodic payments made by the debtor.

The second early purchase option is after 3 months of execution of the agreement. In that event the purchase price is \$3,725.00 for the Property plus tax and past due fees, multiplied by the amount of payments remaining divided by 36 (the total number of payments).

The default purchase option, which appears automatic, is that the debtor make all 36 monthly payments of \$172.45, totaling \$6,208.20.

Under the early purchase options, the debtor is paying less than the \$3,725.00 purchase price for the Property because the payments made reduce said price.

The Agreement provides that if all payments are made, the "cost of rental" is \$2,483.20 (the total payments of \$6,208.00 less the cash price of \$3,725.00 for the Property).

The Agreement gives notice that the debtor will not own the Property until all payments are made or one of the early purchase options are exercised. The Agreement gives the Movant a right to repossession upon default in payments.

In sum, the agreement contains what California Civil Code § 1812.623 indicates every rental-purchase agreement shall contain.

DISCUSSION

At the hearing, **xxxxxxxxxxxxxxxx**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Rocky Top Rentals, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is **xxxxxxxx**

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 52.

The Motion to Confirm is XXXXX

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 51) filed on June 29, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 61) on July 19, 2021, opposing confirmation on the following grounds:

1. The plan treats the claim of Rocky Top Rentals, LLC, as a Class 2. However, that creditor's POC, no. 7, indicates the claim is unsecured.
2. The debtor's plan is a sixty-month plan and the average monthly dividend proposed for the Class 2 claim of Ford Motor Credit Company will take 60 months to pay said claim. As disbursements are not set to commence until month 4, debtor's plan is not feasible.

DEBTOR'S REPLY

The debtor filed a Reply agreeing with the trustee's arguments. The debtor represents that Rocky Top Rentals, LLC, is being contacted to see if the creditor will amend its claim. If that creditor does not do so, the debtor acknowledges that the dividend to unsecured will be increased.

The debtor further recommends the order confirming plan address the start date to payments on Ford Motor Credit Company's claim.

DEBTOR'S SUPPLEMENTAL REPLY

The debtor filed a Supplemental Reply on September 7, 2021. Dkt. 79. The Supplemental Reply reiterates the debtor's past argument that the claim filed by Rocky Top Rentals, LLC, is inaccurate. But, no Objection to Claim has been filed.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Ron Lee Colla, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is **xxxxxxxxxx**

7. [21-20838](#)-C-13 RON COLLA OBJECTION TO CLAIM OF ROCKY TOP
[PGM](#)-4 Peter Macaluso RENTALS, LLC, CLAIM NUMBER 7
9-15-21 [[84](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 44 days' notice. The Proof of Service shows that 55 days' notice was provided. Dkt. 87.

The Objection to Proof of Claim is XXXXXXXXXX

The debtor Ronald L. Colla filed this Objection arguing that Proof of Claim, No. 7, filed by Rocky Top Rentals, LLC (the "Creditor"), incorrectly classifies the Creditor's claim as unsecured. The debtor argues the claim is secured because, while the underlying contract identifies itself as a lease, the actual terms render it to be a security agreement.

The objection identifies the following contract provisions as indicative of a security agreement:

1. "You will not own it until you make all the regularly scheduled payments or you use the early purchase option."
2. "Any time after 3 months from the date of execution of this rental purchase agreement, consumer may purchase the rented property."

CREDITOR'S OPPOSITION

The Creditor filed an Opposition arguing that the debtor misstates applicable law, and that the agreement underlying its claim is a lease because (1) by the agreement's own terms, the agreement is a lease and not a security agreement; and (2) that the agreement is a lease under the meaning of C.C.P. § 1812.622(d).

Creditor also notes that at no time has the debtor claimed the property being leased, a shed, as an asset on the debtor's Schedules.

DEBTOR'S SUPPLEMENTAL REPLY

The debtor filed a Supplemental Reply arguing (1) the contract is not a lease because the debtor paid more to rent the shed than what it is worth; (2) that C.C.P. § 1812.622 does not apply because the contract term is 36 months; (3) that C.C.P. § 1203 applies; and (4) that the contract provisions demonstrate a clear intent to enter a security agreement.

DISCUSSION

At the hearing, XXXXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is **xxxxxxx**

Thru #9

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt.S 23.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor has not provided all required pay advices.
2. The plan mathematically requires a payment of \$2,318.37, which is greater than the proposed payment.
3. The debtor has non-exempt of \$1,150.00. To meet the liquidation test, the plan must provide 5.95% (\$1,150.00 divided by \$19,318.45) to unsecured claims, but presently provides 0%.

DISCUSSION

The trustee's arguments are well taken. Based on the above, it appears the plan is not feasible, does not meet the liquidation test, and cannot be confirmed because the debtor has not provided all necessary pay advices.

Each of the above is reason to deny confirmation. 11 U.S.C. § 1325(a)(1), (a)(4), & (a)(6). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 18 days' notice was provided. Dkt. 26.

The Objection to Confirmation of Plan is sustained.

Creditor U.S. Bank Trust National Association, as Trustee of Dwelling Series IV Trust ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan understates the prepetition arrears owing on Creditor's claim.
2. The plan is not feasible when accounting for the necessary increase in payment to pay the greater arrears owing.

DISCUSSION

The Creditor Proof of Claim, No. 2, represents arrears of \$52,161.80 due as of the date of filing. That amount is greater than the \$51,875.55 in arrears provided for in the plan. Therefore, the plan has not been shown by the debtor to be feasible.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by U.S. Bank Trust National Association, as Trustee of Dwelling Series IV Trust, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the November 9, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 13.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Value is granted.

The debtor filed this Motion seeking to value the portion of OneMain Financial Group, LLC's ("Creditor"), claim secured by the debtor's property commonly known as a 2016 Honda Civic (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$17,000.00. Declaration, Dkt. 12.

DISCUSSION

Upon review of the record, the court finds the value of the Property is \$17,000.00. Therefore, Creditor's secured claim is determined to be \$17,000.00. 11 U.S.C. § 506(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of OneMain Financial Group, LLC ("Creditor") secured by property commonly known as a 2016 Honda Civic (the "Property") is determined to be a secured claim in the amount of \$17,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan.

11. [21-23088](#)-C-13 GINEQUA DARBY
[RDG](#)-1 Gerald Glazer

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-19-21 [[14](#)]

Final Ruling: No appearance at the November 9, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 22.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Objection to Confirmation of Plan is continued to December 14, 2021 at 1:30 p.m.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the plan relies on the court valuing the secured claim of Regional Acceptance Corporation.

DISCUSSION

A review of the docket shows the debtor's Motion seeking to value the secured claim of Regional Acceptance Corporation is set for December 14, 2021 hearing. The hearing on this Objection shall be continued to that date as well.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Confirmation of Plan is continued to December 14, 2021 at 1:30 p.m.